

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

January 5, 2020

SUBJECT: New Castle County POTW Compliance
Concerns
FROM: Andrew Seligman, Environmental Scientist, ESS
TO: Jessica Martinson, Chief, NPDES Permitting
Stacie Pratt, Chief, NPDES Enforcement,
THRU: José Jiménez, Chief, ESS

In September 2020, I began an OfCM review of New Castle County's Publicly Owned Treatment Works (POTW) Pretreatment Program (New Castle), located in Delaware. (b) (5)

New Castle contains three wastewater collection and conveyance systems. One of these systems is connected to the Middletown, Delaware POTW. The other two collection and conveyance systems discharge wastewater to the City of Wilmington POTW.

The Middletown POTW is owned and operated by the City of Wilmington, Delaware. According to New Castle County officials, no Industrial Users (IUs) contribute to the wastewater collection and conveyance system conveying wastewater to the Middletown POTW. (b) (5)

The definition of a POTW per 40 CFR 403.3(q) states: "The term *Publicly Owned Treatment Works* or *POTW* means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works."

Given the Middletown wastewater treatment plant is owned and operated by the City of Wilmington, one would think the sewers, pipes, and other conveyances that convey wastewater to the plant would be owned and operated by the City of Wilmington, meaning City of Wilmington is responsible for the compliance of the system. (b) (5)

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ⁱ 40 CFR 403.3(v) defines a Significant Industrial User as

“1) Except as provided in paragraphs (v)(2) and (v)(3) of this section, the term Significant Industrial User means:

(i) All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(ii) Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste-stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(2) The Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards under 40 CFR§ 403.6 and 40 CFR Chapter I, Subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(i) The Industrial User, prior to the Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(ii) The Industrial User annually submits the certification statement required in § 403.12(q) together with any additional information necessary to support the certification statement; and

(iii) The Industrial User never discharges any untreated concentrated wastewater.

(3) Upon a finding that an Industrial User meeting the criteria in paragraph (v)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an Industrial User or POTW, and in accordance with 40 CFR §403.8(f)(6), determine that such Industrial User is not a Significant Industrial User.